

**A Ng Tang Chi v Tan Sri Datuk Chang Min Tat & Ors
(Cheah Swee Aun, Intervener)**

HIGH COURT (PULAU PINANG) — ORIGINATING MOTION NO 32-65
OF 1988

MOHAMED DZAIDDIN J

B 14 OCTOBER 1988

Administrative Law — Enquiry — Administrative adjudication — Right to cross-examine and obtain copies of reports — Whether applicant entitled to cross-examine witnesses and obtain copies of reports tendered during enquiry — Commissions of Enquiry Act 1950 s 18

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A commission of enquiry ('the commission') was constituted to investigate and enquire into the collapse of a passenger landing at the Pengkalan Sultan Abdul Halim, Butterworth. The plaintiff's daughter was one of the victims in the collapse. At a preliminary meeting of the commission, counsel for the plaintiff had requested that counsel representing persons interested in the enquiry be given copies of the reports and plans beforehand in order to be well equipped for counsel to cross-examine witnesses. The chairman of the commission was of the view that counsel were not entitled to the reports and plans nor would they be allowed to cross-examine witnesses. When the enquiry formally commenced and after two witnesses had given evidence and tendered reports pertaining to an investigation of the probable cause of the collapse of the terminal, counsel for the plaintiff requested the chairman for copies of the reports. The chairman again ruled that copies of the report tendered would not be made available to counsel. The plaintiff — relying on the provisions of s 18 of the Commissions of Enquiry Act 1950 ('the Act') and the rule of natural justice — commenced this application for a declaration that his counsel be entitled to cross-examine all witnesses and be given access to and supplied with copies of all written evidence of the commission.

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Held, dismissing the application:

The plaintiff's and his counsel's presence at the enquiry were not because of s 18 of the Act, but due to the fact that the enquiry was a public enquiry where members of the public were entitled to attend. Their participation was at the discretion of the chairman of the commission. Thus, the prayers asked for in the plaintiff's application came within the discretion of the commissioners. The chairman of the commission had acted within his jurisdiction in refusing to accede to counsel's request and had exercised his discretion correctly (see p 488B, D-E, G).

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[Bahasa Malaysia summary]

Suatu suruhanjaya siasatan ('suruhanjaya tersebut') telah ditubuhkan untuk menyiasat dan menyelidik keruntuhan sebuah landasan

penumpang di Pengkalan Sultan Abdul Halim, Butterworth. Anak perempuan plaintif merupakan salah seorang daripada mangsa keruntuhan. Di mesyuarat permulaan suruhanjaya tersebut, peguam plaintif telah meminta supaya peguam yang mewakili orang-orang yang berkepentingan dalam siasatan tersebut diberikan salinan laporan dan pelan terlebih dahulu agar mereka lebih bersedia untuk memeriksa balas saksi-saksi. Pengerusi suruhanjaya tersebut berpandangan bahawa peguam tidak berhak mendapat laporan atau pelan dan tidak juga akan dibenarkan memeriksa balas saksi-saksi. Apabila siasatan tersebut bermula secara rasmi dan selepas dua saksi telah memberi keterangan dan mengemukakan laporan berhubung dengan suatu siasatan atas punca keruntuhan terminal tersebut, peguam plaintif meminta salinan laporan daripada pengerusi. Pengerusi sekali lagi memutuskan bahawa salinan laporan tersebut yang dikemukakan tidak akan diberikan kepada peguam. Plaintif — dengan bergantung kepada peruntukan s 18 Akta Suruhanjaya Siasatan 1950 ('Akta tersebut') dan rukun keadilan asasi — memulakan permohonan ini untuk satu perisytiharan bahawa peguamnya berhak memeriksa balas semula saksi dan diberikan akses kepada dan diberikan salinan segala keterangan bertulis suruhanjaya tersebut.

Diputuskan, menolak permohonan:

Kehadiran plaintif dan peguam di siasatan tersebut bukanlah akibat s 18 Akta tersebut, tetapi disebabkan hakikat bahawa siasatan tersebut adalah siastan awam di mana orang awam berhak menghadiri. Penyertaan mereka bergantung pada budi bicara pengerusi suruhanjaya tersebut. Justeru itu, permintaan dalam permohonan plaintif diliputi oleh budi bicara pesuruhjaya-pesuruhjaya. Pengerusi suruhanjaya tersebut telah bertindak dalam rangkuman bidang kuasanya dalam ketika enggan menyetujui permintaan peguam dan telah melaksanakan budi bicaranya dengan betul (lihat ms 488B, D–E, G).]

[*Editorial Note*: The plaintiff's appeal to the Supreme Court vide Supreme Court Appeal No 434 of 1988 was dismissed.]

Legislation referred to

Commissions of Enquiry Act 1950 ss 2(1)(d), 8, 11, 18, 21(2), 22
Specific Relief Act 1950 s 44

K Balasundaram (Balasundaram & Co) and N Shanmugam (Shan & Gooi) for the plaintiff/applicant.

Zulkifli bin Bakar (State Deputy Legal Adviser) for the defendants/respondents.

Mohamed Dzaidin J:

By this originating motion, the plaintiff, whose daughter was one of the victims in the collapse of the passenger terminal platform at Pengkalan

- A** Sultan Abdul Halim, Butterworth on 31 July 1988, prays for a declaration that his counsel be entitled to cross-examine all witnesses and be given access to and supplied with copies of all written evidence of the Commission of Enquiry instituted under the Commissions of Enquiry Act 1950 ('the Act') vide PU (B) 379 dated 4 August 1988. Alternatively, the plaintiff prays for this court to exercise its powers under s 44 of the Specific Relief Act 1950 directing the commissioners to grant the plaintiff similar orders as prayed above.

- The plaintiff commenced his application after what transpired at the Commission of Enquiry's hearing on 2 and 28 September respectively. In his affidavit, he deposed that at the preliminary meeting of the commission held on 2 September 1988, the Chairman briefed those present about the procedure to be followed in the enquiry. His counsel, Mr Balasundaram requested that in view of the complexity and technical nature of the enquiry, counsel representing persons interested in the Enquiry be given copies of the reports and plans beforehand to facilitate the saving of time and to be well equipped for counsel to cross-examine witnesses. To this request, the Chairman was of the view that counsel were not entitled to the reports and plans nor would they be allowed to cross-examine witnesses. Then, when the enquiry formally commenced on 28 September 1988 and after two witnesses had given evidence and tendered reports pertaining to the Penang Port Commission investigation of the probable cause of the collapse of the terminal, Mr Balasundaram requested the Chairman for copies of these reports. The enquiry was adjourned to enable the Chairman to consider this application. After the resumption, the Chairman ruled that the copies of the report tendered would not be made available to counsel.

- Mr Balasundaram for the plaintiff, in this application, relied on the provision of s 18 of the Act and the rule of natural justice. The relevant part of s 18 reads as follows:

- Any person whose conduct is the subject of enquiry under this Act, or who is in any way implicated or concerned in the matter under enquiry, shall be entitled to be represented by an advocate at the whole of the enquiry; and any other person who may consider it desirable that he should be so represented may, by leave of the Commissioner or Commissioners, be represented in the manner aforesaid ...'* (Emphasis added.)

Counsel submitted that s 18 must be read in the context of s 2(1)(d), the relevant part of which states:

- 2 (1) The Yang di-Pertuan Agong may, where it appears to him to be expedient so to do, issue a Commission appointing one or more Commissioners and authorizing the Commissioners to enquire into —
- (d) any other matter in which any enquiry would, in the opinion of the Yang di-Pertuan Agong, be for the public welfare ...

- Hence, counsel submitted that the plaintiff came within the second part of the first limb of s 18, ie any person who is in any way concerned in the matter under enquiry read together with s 2(1)(d) because his daughter was one of the victims in the 'crash' and that he was entitled to know the cause of death and the persons responsible for her death.

In my opinion, the better view is that he may come under the second category of s 18 as 'any other person who may consider it desirable that he should be so represented'. Such being the case, he may, by leave of the commissioner, be so represented at the enquiry. However, no leave was applied by him to the commissioner. On the other hand, it is clear to me that the plaintiff's presence and that of his counsel at this enquiry are not because of s 18, but must be due to the fact that it is a public enquiry where members of the public are entitled to attend and their participation must be at the discretion of the Chairman. It is worth mentioning here that the plaintiff in the present application is not applying for a declaratory order that he be made a party within the meaning of s 18. What he is seeking for is the right to cross-examine witnesses and to be given access to and supplied with copies of reports for the purpose of cross-examining witnesses. It must not be forgotten that under s 11, the evidence taken under the Act shall not be admissible in any civil or criminal proceedings against the person who gave evidence and, under s 21(2) all evidence given for the purpose of the Act, shall be absolutely privileged so that the witness giving such evidence shall not be liable to any suit in respect of such evidence.

That being the position, as I see it, the prayers asked for in this application, in my opinion, come within the discretion of the commissioners. Section 8 of the Act, inter alia, provides their powers relating to the procuring, receiving, of evidence and to examining all persons as witnesses as the commissioners may think it necessary or desirable to examine. In addition, it is clearly stipulated in s 22 that the procedure to be followed shall be in their discretion.

On the issue of natural justice, I feel the point taken up by counsel at this stage is irrelevant and misplaced.

Therefore, after considering this application, I am satisfied that I have not been persuaded to make a declaratory order against the exercise of the discretion of the commissioners. Based on the facts as stated in the affidavit of the plaintiff concerning matters which transpired during the preliminary hearing and the formal sitting of the commissioners on 28 September 1988, and the subsequent meeting of the commissioners with counsel, I find the Chairman of the commission had acted within his discretion in refusing to accede to counsel's request. Further, I am satisfied that he had exercised his discretion correctly. In the result, the plaintiff's application is refused. I make no order as to costs.

Plaintiff's application dismissed.

Reported by Andrew Christopher Simon

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